

LETTER TO COMMISSION

TO: Mayor Dan Gelber and Members of the City Commission
Alina T. Hudak, City Manager
Rafael Granado, City Clerk
Joe Centorino, Inspector General

FROM: Rafael A. Paz, Acting City Attorney



DATE: July 1, 2021

SUBJECT: Senate Bill 1890

The purpose of this Letter to Commission is to advise the City Commission of any impact of Senate Bill 1890 ("SB 1890") on the City's existing campaign finance laws, a key component of the City Commission's efforts to promote ethics and public confidence in elected officials and candidates for elected office. For the reasons as set forth more fully below, SB 1890, which was recently signed into law by Governor DeSantis, would not impact the City's continued enforcement of its existing campaign finance laws.

Effective July 1, 2021, SB 1890 imposes a \$3,000 limit on contributions to political committees sponsoring ballot initiatives to amend the Florida Constitution. The \$3,000 contribution limit only applies during the time period prior to the Secretary of State's issuance of a certificate designating a place on the ballot for the proposed Constitutional amendment.

SB 1890 also preempted local governments from enacting, enforcing, or adopting:

- Contribution limits that differ from existing limits specified by statute;
- Any limitation or restriction involving contributions to a political committee or an electioneering communications organization; or
- Any limitation or restriction on expenditures for an electioneering communication or an independent expenditure.

Several members of the City Commission have asked whether the preemption language in SB 1890 would have any effect on the City's existing campaign finance reform laws which, in part, prohibit a candidate for City elected office and/or a member of the City Commission, from soliciting a vendor/real estate developer/their respective lobbyists (collectively, "Prohibited Donors"), for a campaign contribution for a political committee that supports or opposes candidates for City elected office.¹

¹ See, City Code Section 2-487A(1)(b)ii, Section 2-488(1)(b)ii, Section 2-489A(1)(b)ii, and Section 2-490(1)(b)ii.

After a thorough search of the legislative record, and consultation with Florida League of Cities, there is no evidence of clear legislative intent that SB1890 was intended to prohibit a local government from enforcing its ethics laws aimed at addressing the actual and/or appearance of quid pro quo contact between its elected officials (and candidates for such offices) and Prohibited Donors. Rather, the text and Senate's legislative record is devoid of any reference whatsoever to the separate and distinct conduct of solicitations to political committees (either by elected officials, candidates, or otherwise) and appears to focus primarily on its newly-imposed \$3000 limit on contributions to political committees during the signature-gathering stage of initiative petition drives for proposed amendments to the State Constitution.

In reviewing SB1890 in its entirety and in the context of available legislative intent, the legislation appears to merely reinforce the Senate's primary overriding concern with ensuring the viability of its \$3000 contribution limit to political committees, by preempting a local government's ability to adopt different contribution limits for such committees, or any other restriction of a local government that could result in a greater contribution limit for such political committees. Accordingly, the preemption language in SB1890 does not appear to prevent the City from its continued enforcement of any of its campaign finance laws.

For ease of reference, City Attorney Raul J. Aguila's 2016 memorandum addressing the City's campaign finance reform laws, remains in effect and unchanged. A copy of that memorandum, which provides helpful guidance and "do's and don'ts," is attached hereto as Exhibit "A."

Finally, I must note that on May 8th, the American Civil Liberties Union of Florida filed a lawsuit in the United States District Court for the Northern District of Florida, challenging the constitutionality of SB 1890, arguing that the law unduly burdens and chills Florida citizens' free speech and association, as protected by the First Amendment. Although the Court has not ruled on the pending injunction motions, we are monitoring the case closely, and will keep you apprised of any developments in the matter.

If you have any questions, do not hesitate to contact me at any time.

RAP/ag

Ex. A – LTC-348-2016

MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

LETTER TO COMMISSION

LTC No. 348-2016

TO: Mayor Philip Levine and Members of the City Commission

FROM: Raul J. Aguila, City Attorney



DATE: August 24, 2016

SUBJECT: City of Miami Beach Campaign Finance Laws--Candidate Restrictions

In light of the City Commission's recent amendments to Miami Beach's Campaign Finance laws, this Memorandum has been prepared in order to provide a brief outline of such laws' applicability to candidates for elected office in the City of Miami Beach and their campaign committees. The subject Code proscription is summarized as follows:

Candidates for the offices of Miami Beach Mayor or City Commissioner as well as their campaign committees may not directly or indirectly solicit, accept or deposit into such candidate's campaign account any campaign contribution from a vendor, real estate developer¹, and/or their lobbyists.

The following chart sets forth the *Code's prohibited actions, as well as those actions not otherwise prohibited, applicable to City candidates and their campaign committees:*

PROHIBITED ACTIONS	ACTIONS NOT PROHIBITED
May not "directly" (i.e., the candidate him/herself) solicit, accept or deposit into that candidate's campaign account a campaign contribution from a vendor, real estate developer, or lobbyist of a vendor or real estate developer.	May directly solicit, accept or deposit into a candidate's campaign account a campaign contribution from a donor, so long as the donor is not a vendor, real estate developer, or lobbyist of a vendor or real estate developer. NOTE: Candidates and their campaign committees are directed to make

¹ The terms "vendor" and "real estate developer" are specifically defined in the City Code and only those persons/entities falling within those definitions are subject to the City's campaign finance restrictions. See, City Code section 2-487(4) defining the term "vendor", and City Code section 2-489(4) defining the term "real estate developer".

Exhibit "A"

	reasonable efforts to ensure that potential donors solicited on a wide-scale basis (such as open invitations to a particular class of invitees, or solicitations via e-mail blasts) do not include City vendors, real estate developers, or their lobbyists ² .
May not "indirectly" (i.e. through a third party, where the candidate has coordinated with, or directed another person/entity to act) solicit, accept or deposit into that candidate's campaign account) a campaign contribution from a vendor, real estate developer, or lobbyist of a vendor or real estate developer.	May indirectly solicit, accept or deposit a campaign contribution into a candidate's campaign account from a donor, so long as the donor is not a vendor, real estate developer, or lobbyist of a vendor or real estate developer. NOTE: Candidates and their campaign committees are directed to make reasonable effort to ensure that those potential donors solicited on a wide-scale basis (such as open invitations to a particular class of invitees, or solicitations via e-mail blasts) do not include City vendors, real estate developers or their lobbyists.
May not directly or indirectly solicit a vendor, real estate developer, or lobbyist of a vendor or real estate developer for a campaign contribution to a political committee (PAC) ³ that supports or opposes candidates for City elected office.	May directly or indirectly solicit a vendor, real estate developer, or lobbyist of a vendor or real estate developer, for a campaign contribution to an electioneering communication organization (ECO), to a PAC which does not support or oppose candidates for City elected office, or to a candidate for office other than City Mayor or Commissioner. NOTE: The City Code prevents candidates

² Were a candidate, in the midst of a wide-scale solicitation, to inadvertently solicit a vendor, real estate developer, or their lobbyist, such action would constitute a per se violation of the City's Code, subject to review by the Miami-Dade County Ethics Commission. In such situation, the Ethics Commission would consider all reasonable efforts made by the candidate to pre-determine whether such prohibited donors would be within the class of persons targeted for solicitation, as well as all efforts made by the candidate to mitigate the prohibited solicitation (such as timely correspondence withdrawing requests for contributions and/or returning such contributions).

³ The City's Ordinance expressly provides that the term "political committee" is defined in accordance with Florida Statutes, Chapter 106, and that the term "candidate" is defined in accordance with Florida Statutes, Section 97.021(5).

	for City office from soliciting campaign contributions on behalf of a PAC when that PAC supports/opposes candidates for City elected office BUT does not prohibit a City candidate from otherwise associating with or serving as an officer of a political committee, regardless of whether that PAC does or does not support/oppose candidates for City elected office.
May not solicit, accept or deposit into a candidate's campaign account a campaign contribution from a potential donor without first checking the City's website, as well as verifying with the City's Procurement Division, the "vendor" status of any potential donor, verifying with the City Clerk's records department the "real estate developer" status of any potential donor, and verifying with the City Clerk's records whether a potential donor is a "lobbyist" for a vendor or real estate developer.	Once this verification process has occurred and the candidate and/or his campaign committee has confirmed that a potential donor is not a vendor, real estate developer, or a lobbyist for a vendor or real estate developer, the candidate and his campaign committee may then solicit, accept or deposit into the candidate's campaign account a campaign contribution from the subject potential donor.

The above is intended as an overview of the City's Campaign Finance Laws' applicability to candidates for City office. Should you have any specific questions pertaining to this matter or otherwise wish to discuss the above issues in greater detail, please do not hesitate to contact me.

RJA/jo/ag